

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 5-22 remain pending in the present application.

In the outstanding Office Action, Claims 5-13 were rejected under 35 U.S.C. § 103(a) as unpatentable over Asakawa, et al. (U.S. Pat. No. 6,825,056, hereinafter “Asakawa”); Claims 14-22 were rejected under 35 U.S.C. § 103(a) as unpatentable over Asakawa in view of Bailey, et al. (U.S. Pat. No. 7,229,273, hereinafter “Bailey”); and Claims 5-13 were rejected under 35 U.S.C. § 103(a) as unpatentable over Sugiyama et al. (U.S. Pat. No. 7,037,738, hereinafter “Sugiyama”);.

Regarding the 35 U.S.C. § 103(a) rejections based on Asakawa and Sugiyama, filed herewith is an accurate translation of Applicants’ Japanese Priority Document JP 2003-049612, which hereby completes Applicants’ perfection of claim to priority. The filing date of the priority document was February 26, 2003. The priority document provides support for the presently pending claims. Thus, Applicants are entitled to February 26, 2003 filing date.

Asakawa and Sugiyama qualify only as prior art under 35 U.S.C. §102(e), as Applicants’ February 26, 2003 priority date predates the September 18, 2003, publication date of Asakawa and the September 25, 2003, publication date of Sugiyama.

However, Applicants note that Asakawa and Sugiyama and the present application were, at the time the claimed invention was made, owned by or subject to an obligation of assignment to the same person. In other words, the present application and the Asakawa and Sugiyama references, were, at the time the invention of this application was made, subject to an obligation of assignment to Kabushiki Kaisha Toshiba. In view of the above noted facts and based on M.P.E.P. § 706.02(l)(2) II, it is believed that common ownership of this application and Asakawa and Sugiyama has been established.

Accordingly, Applicants respectfully submit that under 35 U.S.C. § 103(c), Asakawa and Sugiyama are disqualified as prior art. Therefore, it is respectfully submitted that all the outstanding rejections based on Asakawa and Sugiyama are moot in view of the above perfection of priority and disqualification for commonly owned subject matter.

Since Applicant has not substantively amended the claims in response to any rejection on the merits, a further rejection of these claims based on newly cited prior art in the next communication **cannot properly be considered a Final Office Action**.

Consequently, in light of the above discussion, the outstanding grounds for rejection are believed to have been overcome. The application is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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